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MAY 30 2007

OFFICE OF PETITIONS

In re Application of :
Eaton et al. :
Application No. 10/035,958 : DECISION GRANTING APPLICATION
Filed: Dec. 26, 2001 :
Attorney Docket No. GNE.303OR1C7 :

This decision is in response to applicant's application titled "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705" timely¹ filed on April 12, 2007 requesting that the Patent Office adjust the amount of days granted at the time of the notice of allowance from 634 to 759 days.

Applicant's application for PTA is **GRANTED-in PART**. The Office will adjust the PAIR calculation to reflect that the correct determination at the time of the mailing of the notice of allowance is seven hundred and fifty-five (755) days.

Applicants note that the Office incorrectly assessed a one hundred and seven day (125) delay by applicant for failing to reply to the Office's mailing of a non-final rejection within three months of the mailing of the Office action. Applicants assert that the Office re-mailed the Office action on January 27, 2006 restarting the time period. Accordingly, the applicants assert did not fail to engage in any reasonable efforts to conclude prosecution of the application because they responded within three months of the re-mailed action.

Applicant arguments are persuasive to the extent herein indicated.. The Office mailed an Office action on September 27, 2005 but re-mailed the Office action on January 27, 2006 which gave applicant three months to respond without loss of PTA. Applicant responded on May 1, 2006. Accordingly, applicant fail to engage in reasonable efforts to conclude prosecution of the

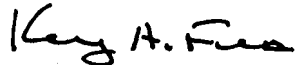
¹Issue fee paid on 4/12/2007.

application by a period of four days, not 125 days.² The one hundred and twenty-five (125) day reduction to patent term adjustment is an error. Accordingly, at the time of the mailing of the notice of allowance, the USPTO delayed by a period of 762 days under 37 CFR 1.702(a)(1) and applicants delayed by a period of 7 days ($4 + 2 + 1 = 7$) under 37 CFR 1.704(b). Accordingly, the correct amount of PTA at the time of the mailing of the notice of allowance is 755 days.

The Office acknowledges the payment of the \$200.00 fee for this application. No additional fees are required.

After the mailing of this decision, the application will be forwarded to the Office of Patent Publication for a prompt issuance of this patent application. Any delays in issuance of the patent will be reflected in the PTA calculation provided with the issue notification letter

Any questions concerning this matter should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7757.



Kery Fries

Senior Legal Advisor

Office of Patent Legal Administration

Office of Deputy Commissioner

for Patent Examination Policy

cc: Copy of Adjusted PAIR calculation

²The reduction began on April 28, 2006 and ended on May 1, 2006, a four day delay.

Day : Tuesday
Date: 5/29/2007**PALM INTRANET**

Time: 15:09:55

PTA Calculations for Application: 10/035958

Application Filing Date:	12/26/2001	PTO Delay (PTO):	762
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	128
Post-Issue Petitions:	0	Total PTA (days):	755
PTO Delay Adjustment:	121		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
57	05/29/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	121		
49	01/12/2007	MAIL NOTICE OF ALLOWANCE			
48	01/11/2007	ISSUE REVISION COMPLETED			
47	01/11/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
46	01/03/2007	NOTICE OF ALLOWABILITY			
45	10/18/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
44	10/29/2006	DATE FORWARDED TO EXAMINER			
43	10/18/2006	RESPONSE AFTER NON-FINAL ACTION		1	41
42	10/18/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	07/17/2006	MAIL NON-FINAL REJECTION			
40	07/11/2006	NON-FINAL REJECTION			
39	05/01/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
38	05/01/2006	REFERENCE CAPTURE ON IDS			
37	05/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	05/10/2006	DATE FORWARDED TO EXAMINER			
35	05/01/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
34	05/10/2006	DATE FORWARDED TO EXAMINER			
33	05/01/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		125	27
32	05/10/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
31	05/01/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			

30	01/27/2006	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
29	01/24/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
28	12/19/2005	CORRESPONDENCE ADDRESS CHANGE			
27	09/27/2005	MAIL FINAL REJECTION (PTOL - 326)			
26	09/20/2005	FINAL REJECTION			
25	07/01/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
24	07/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	21
23	07/01/2005	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
22	07/12/2005	DATE FORWARDED TO EXAMINER			
21	07/01/2005	RESPONSE AFTER NON-FINAL ACTION		2	19
20	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
19	03/29/2005	MAIL NON-FINAL REJECTION	762		-1
18	03/18/2005	NON-FINAL REJECTION			
17	01/16/2005	CASE DOCKETED TO EXAMINER IN GAU			
16	08/03/2004	CASE DOCKETED TO EXAMINER IN GAU			
15	10/03/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	05/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	12/26/2001	PRELIMINARY AMENDMENT			
11	03/19/2002	CASE DOCKETED TO EXAMINER IN GAU			
10	02/15/2002	APPLICATION DISPATCHED FROM OIPE			
9	02/14/2002	APPLICATION IS NOW COMPLETE			
6	02/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
5	01/28/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
4	01/17/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	12/26/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
2	12/26/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

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